***THE HONOURABLE MR.JUSTICE V.V.S. RAO**

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+W.P. NOS. 8973, 8974 & 8975 OF 2004

% 27-10-2004

#M/S. NATRAJ STEELS PVT.LTD., RAJAM,
REP. BY ITS MANAGING DIRECTOR,
SRI. POTTA SITARAM GUPTA S/O.LATE SANYASA RAO,
R/O. RAJAM, SRIKAKULAM DISTRICT.

..PETITIONER.

VS.

$ 1. CHIEF CONTROLLING REVENUE AUTHORITY/THE
COMMISSIONER AND INSPECTOR GENERAL OF
REGISTRATION AND STAMPS, N.B.K. BUILDINGS,
ZAMISTANPUR, HYDERABAD
2. THE DISTRICT REGISTRAR OF ASSURANCES AND
COLLECTOR UNDER INDIAN STAMP ACT,
SRIKAKULAM.
3. DEPUTY INSPECTOR GENERAL OF REGISTRATION
AND STAMPS AND DEPUTY COLLECTOR, FLYING
SQUAD, ZONE-1, VISAKHAPATNAM.

..RESPONDENTS.

! COUNSEL FOR THE PETITIONER: MR.K.V. SUBRAHMANYA
NARUSU

^ COUNSEL FOR THE RESPONDENTS: G.P. FOR REVENUE

(GENERAL)

< Gist :

> Head Note :

? CITATIONS :

1. 1999 (4) ALT 32
2. AIR 2000 SC 355
3. 2003 (4) ALD 1

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE TWENTY SEVENTH DAY OF OCTOBER TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE V.V.S.RAO

WRIT PETITION NOS : 8973, 8974 & 8975 of 2004

W.P.No. 8973 of 2004

Between:

Natraj Steels Pvt.Ltd., Rajam, rep by its Managing

Director Potta Sitaram Gupta S/o.Late Sanyasa Rao,

R/o. Rajam, Srikakulam District.

..... PETITIONER

AND

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1 The Chief Controlling Revenue Authority/The

Commissioner and Inspector General of Registration

and Stamps, N.B.K. Buildings, Zamistanpur,

Hyderabad.

2 The District Registrar of Assurances and Collector under

Indian Stamp Act, Srikakulam.

3 Deputy Inspector General of Registration and Stamps

and Deputy Collector, Flying Squad, Zone-I,

Visakhapatnam.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ, order or direction, particularly a writ in the nature of mandamus, declaring the order of the 1st respondent herein in his proceedings No.CCCA/32023/2000 Dt: 5.3.2004 confirming the proceedings No.1458/99 Dt:2-7-1999 of the 2nd respondent herein separately levying deficit stamp duty of Rs.47,710/- Rs.48,050/- in respect of document No.864 of 1999 of S.R.O. Rajam respectively as illegal and without jurisdiction.

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W.P.No. 8974 of 2004

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Between:

Natraj Steels Pvt.Ltd., Rajam, rep by its Managing

Director Potta Sitaram Gupta S/o.Late Sanyasa Rao,

R/o. Rajam, Srikakulam District.

..... PETITIONER

AND

1 The Chief Controlling Revenue Authority/The

Commissioner and Inspector General of Registration

and Stamps, N.B.K. Buildings, Zamistanpur,

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W.P.No. 8975 of 2004

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Between:

Natraj Steels Pvt.Ltd., Rajam, rep by its Managing

Director Potta Sitaram Gupta S/o.Late Sanyasa Rao,

R/o. Rajam, Srikakulam District.

..... PETITIONER

AND

-

1 The Chief Controlling Revenue Authority/The

Commissioner and Inspector General of Registration

and Stamps, N.B.K. Buildings, Zamistanpur,

Hyderabad.
2 The District Registrar of Assurances and Collector under

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Counsel for the Petitioner: MR.K.V.SUBRAHMANYA NARUSU

(in all the writ petitions)

Counsel for Respondents: GP For Revenue (General)

(in all the writ petitions)

The Court made the following :

COMMON ORDER:

M/s. Natraj Steels Private Limited, Rajam, is the petitioner in these three writ petitions. The point raised for consideration is same in all the matters and therefore, it is appropriate to dispose of the three writ petitions by a common order.

The fact of the matter is not in dispute. The petitioner company purchased 1/3 of undivided interest in an extent of 3969 Sq. yards in Sy.No.151/15 along with godowns under a registered sale deed dated 8-4-1999. It also purchased similar extent of land by two other sale deeds registered on the same date. It appears to have approached the Sub-registrar for pre-registration enquiry as to stamp duty and after obtaining necessary clarification as to value of the property, it paid the stamp duty for the market value of the land in a sum of Rs.47,710/- (Rupees forty seven thousand seven hundred and ten only). The three sale deeds were registered, as mentioned supra as document Nos. 864 of 1999, 927 of 1999 and 946 of 1999. It appears, during office audit of the office of the Sub-Registrar, Rajam, it was pointed out that the three sale deeds are not duly stamped and accordingly action was initiated for recovery of deficit stamp duty. The second respondent herein issued a demand notice dated 13-8-1999 followed by two show cause notices calling upon the petitioner to pay the amount and also informed that action would be initiated if the amount is not paid. The petitioner submitted representations in all the three matters *inter alia* contending that the petitioner has not suppressed any material facts for the purpose of valuation of the sale deed, and therefore, the provisions of Section 41-A of the Indian Stamp Act, 1899 ('Stamp Act' for brevity) cannot be invoked. By an order dated 2-9-1999 in proceedings No.1458/99/2799 the second respondent rejected the representation of the petitioner determining that the petitioner has to pay an amount of Rs.47,710/- (Rupees forty seven thousand seven hundred and ten only) towards deficit stamp duty in respect of the documents which were registered earlier.

Against any order passed by the second respondent, an appeal is provided to the first respondent under Sub-section (3) of Section 41-A of the Stamp Act within three

months from the date of the order of the second respondent. The petitioner, however, filed appeals with some delay and the first respondent rejected the appeals as barred by limitation, on 31-12-1999. Aggrieved by the same, the petitioner filed writ petitions being W.P.Nos.2489, 2504 & 2584 of 2000 before this Court. This Court remanded the matters to the first respondent for consideration of the applications filed by the petitioner for condonation of delay. Therefore, the first respondent condoned the delay and considered the appeals. Before the first respondent, the petitioner contended that he has not suppressed the valuation of the property determined under the sale deeds and therefore, the provisions of Section 41-A of the Stamp Act are not attracted, that the second respondent did not pass any orders duly considering the representation made by the petitioner and that applying market value at Rs.600/- (Rupees six hundred only) per square yard to the property sold under the sale deeds is erroneous.

The first respondent after considering the grounds urged before him, dismissed the appeals by common order dated 5-3-2004 holding that Section 41-A of the Stamp Act would be attracted even where the registering authority commits a mistake in valuing the document. Assailing the common order of the first respondent, the petitioner filed these three separate writ petitions relating to each sale deed registered on 8-4-1999.

The second respondent filed counter affidavit opposing the writ petitions contending that as per Urban Basic Register of Rajam, the property comprised in Door Nos.8-1182, 8-219 was valued at Rs.600/- (Rupees six hundred only) per square yard, which ought to have been adopted by the petitioner. The petitioner, however, did not verify the Urban Basic Register and adopted the rate of Rs.270/- (Rupees two hundred and seventy only) per square yard as per the Land Basic register. All other allegations made by the petitioner are denied.

The learned counsel for the petitioner submits that for non-disclosure of reasons the orders of the second respondent are vitiated; that the first respondent has not considered all the grounds urged before him; and that in the absence of any suppression or concealment by the petitioner, the respondents could not have invoked the provisions of Section 41-A of the Stamp Act. The respondents grossly erred in applying the valuation mentioned in Urban Basic Register since the property purchased by the petitioner is situated in Gram Panchayat. The learned counsel also submits that in the counter affidavit reasons disclosed for valuing the property at about Rs.600/- (Rupees six hundred only) were absent in the impugned order of the first respondent as well as the orders of the second respondent, which was impermissible under law. The learned counsel placed reliance on the judgment of this Court in **Mir Sabir Ali v. Commissioner of Police, Hyderabad** in support of his submission that the statutory authority cannot be permitted to disclose reasons in the counter affidavit filed in the Court.

The learned Assistant Government Pleader for Revenue (General) Sri V. Suryakiran relies on the decision of the Supreme Court in **Duncans Industries Ltd. v. State of**

U.P. and others and a decision of this Court in **K. Upender and another v. State of A.P. and others** in support of his contention that when the sale deed itself is in respect of the land and building, the property has to be valued as such, whereas in the case of the petitioner the land was only valued for the purpose of stamp duty, which was a mistake squarely falling within the ambit of Section 41-A of the Stamp Act.

The question of non-disclosure of reasons –

It is axiomatic that a statutory authority should record reasons in support of the orders. It is not denied before this Court that the second respondent initiated action under Section 41-A of the Stamp Act and initially issued a demand notice followed by a show cause notice demanding payment of deficit stamp duty. The petitioner submitted explanation. In proceedings No.1458/99/CC dated 2-7-1999 (similar orders are passed in all the cases) the second respondent considered the representation and came to the conclusion that the document is chargeable to stamp duty of Rs.98,210/- (Rupees ninety eight thousand two hundred and ten only) under Article 47-A of Schedule I-A of the Stamp Act for the reason that the value of the land at the rate of Rs.600/- (Rupees six hundred only) per square yard would come to Rs.23,81,400/- (Rupees twenty three lakhs eighty one thousand and four hundred only) and 1/3rd of it comes to Rs.7,93,800/- and the value of building (godown) would be Rs.98,800/- (Rupees ninety eight thousand and eight hundred only). In a case of this nature, having regard to the provisions of Section 41-A of the Stamp Act, I fail to understand what more reasons are to be recorded by the second respondent at this stage. A reference may be made to Section 41-A of the Stamp Act, which reads as under:

41-A. Recovery of Stamp Duty not levied or short levied:-

(1) Whereafter the commencement of the Indian Stamp (Andhra Pradesh Amendment) Act, 1986, any instrument chargeable with duty has not been duly stamped and registered by any Registering Officer by mistake and remarked as such by the Collector or any audit party, the Collector may, within five years from the date of registration serve a notice on the person by whom the duty was payable requiring him to show cause why the proper duty or the amount required to make up the same should not be collected from him:

Provided that where the non-payment was by reason of fraud, collusion or any willful misstatement or suppression of facts or contravention of any of the provisions of this Act or the rules made thereunder with intent to evade payment of duty, the Collector may, within twenty years from the date of registration, serve a notice on such person to show cause why the proper duty or the amount required to make up the same should not be collected from him.

(2) The Collector for any officer specially authorized by him in this behalf shall, after considering the representation if any, made by the person on whom notice is served under sub-section (1), determine by an order, the amount of duty due from such person (not being in excess of the amount specified in the notice) and thereupon such person shall pay the amount as determined. On payment of the duty the Collector shall add a certificate under Section 42.

(3) Any person aggrieved by an order under sub-section (2) may prefer an appeal before

the Commissioner of Survey, Settlement and Land Records, Andhra Pradesh, Hyderabad within three months from the date of such order.

(4) Any duty payable under this section shall be recovered as an arrear of land revenue.

In plain and simple terms sub-section (1) of Section 41-A of the Stamp Act empowers the second respondent to serve a notice on the person by whom the duty was payable to show cause as to why proper duty or the amount required to make up the same should not be collected from him (a) when any instrument chargeable with duty has not been duly stamped and registered by Registering Authority by mistake; (b) remarked as such by the Collector; or (c) any audit party. The only restriction imposed by sub-section (1) of Section 41-A of the Stamp Act is that after a period of five years from the date of registration, the authority is not empowered to invoke sub-section (1) of Section 41-A of the Stamp Act. A notice is required to be served within five years though an order can be passed beyond five years. Be that as it is, in this case there is no denial of the fact that the second respondent initiated action as objection was raised during the course of checking of documents registered in the office of Sub-Registrar, Rajam, so as to say during the audit. The case squarely, therefore, falls under Section 41-A of the Stamp Act and the contention of the petitioner that it has not suppressed the facts and that it obtained the proper stamp duty payable from the Sub-registrar and therefore Section 41-A of the Stamp Act cannot be invoked, is misconceived and is accordingly rejected.

The learned counsel for the petitioner does not dispute that the proceedings of the second respondent dated 2-7-1999 are emerged in the orders of the first respondent and therefore, even if the reasons are not disclosed in the orders of the second respondent which is not the case as seen above, the petitioner cannot succeed. Insofar as the impugned order of the first respondent is concerned, I have been taken through the grounds of appeal taken by the petitioner in the appeal before the first respondent. The petitioner has demanded as many as eleven grounds and to my mind all these grounds centered round the only question as to whether it was proper for the second respondent to invoke the provision of Section 41-A of the Stamp Act when the petitioner is not guilty of suppression of the valuation. Indeed a perusal of the impugned order of the first respondent would show that the advocate for the petitioner herein who appeared before the first respondent raised the only contention that the market value of Rs.270/- (Rupees two hundred and seventy only) per square yard adopted for payment of Stamp duty as informed by Sub-registrar, Rajam cannot be changed under Section 41-A of the Stamp Act. The said question has been considered by the first respondent in the following terms.

The only point raised in the present appeal is that the valuation adopted by the appellant on the market value furnished by the registering officer cannot be reopened by the District Registrar concerned under Section 41-A and as such the demand of deficit stamp duty in all the three (3) cases is not maintainable under the law.

It is clearly laid down in Section 41-A of the Indian Stamp Act that any instrument chargeable with duty has not been duly stamped and registered by any Registering Officer by mistake and remarked as such by the Collector or any audit party the Collector may,

within five years from the date of registration serve a notice on the person by whom the duty was payable requiring him to show cause why the proper duty or the amount required to make up the same should not be collected from him:

From the above it is seen that all kinds of mistakes reported by way of audit or inspection are actionable under this section including the present one. It is further noted that the appellant having godowns situated in the transferred property omitted to mention the door number assigned to these constructions and instead mentioned only survey number of the property against which the value available in the basic register was given by the concerned registering officer. However, had they furnished the existing door number corresponding to the godowns the rate applicable could have been furnished to them. Thus the appellants must bear their due share of blame for getting a lower rate applied by furnishing incomplete particulars or factors affecting the chargeability to stamp duty which is prosecutable offence under Section 27 and 64 of the Indian Stamp Act, Accordingly the appeal merits no consideration.

Consequently, the appeal is dismissed.

After perusing the orders of the second respondent dated
2-7-1999 as well as the first respondent dated 5-3-2004, I am not able to countenance the submission of the learned counsel for the petitioner that reasons are not disclosed in the impugned order of the first respondent. The first respondent duly considered the only submission raised before him and came to the conclusion whether or not it is the mistake of the Sub-registrar and whether or not such mistake was found out from the audit, Section 41-A of the Stamp Act is attracted. On a true interpretation of Section 41-A of the Stamp Act as above, it cannot be said that the order of the first respondent suffers from any error in law requiring interference in this writ petition.

The submission of the learned counsel based on the decision of this Court in **Mir Sabir Ali** case (1 supra) is misconceived. Whatever reasons as are required to be disclosed are already disclosed in the orders of the second respondent as well as the first respondent and the counter affidavit of the first respondent does not in any manner improve thereupon except giving a proper explanation as to why Rs.600/- (Rupees six hundred only) ought to have been adopted as the value for the land purchased by the petitioner.

The question of applying Urban Basic Register –

The learned counsel for the petitioner placed strong reliance on Rule 4 of the Andhra Pradesh Revision of Market Value Guidelines Rules 1998 ('Revision Rules' for brevity) in support of the contention that in the absence of any master plan, Rajam Gram Panchayat where the property is situated cannot be considered as urban area. Rule 4(2) of the Revision Rules deals with authorities competent to prepare market value guidelines as per Rule 4(2) (a) of the Revision Rules in urban areas, namely, the areas falling within the jurisdiction of municipality/municipal corporation, urban development authorities, municipalities, and informed areas including Gram Panchayats falling within master plan areas and urban agglomeration. Different authorities are designated in contra distinction with the rural areas falling within Gram Panchayats other than those Gram Panchayats falling

within the description of Rule 4(2) (a) of the Revision Rules. The submission of the learned counsel that Rajam area does not fall within urban areas cannot be accepted in the absence of any material and a presumption exists in favour of the respondents that all their actions unless the contrary is shown are taken to be in accordance with the Revision Rules. No material is placed before this Court to come to a conclusion that the Gram Panchayat, Rajam is not falling within the master plan of area or any other area described under Rule 4(2)(a) of the Revision Rules. Further the petitioner either in its representations before the second respondent or in the grounds of appeal before the first respondent has not taken any such ground though in the proceedings dated 2-7-1999 the second respondent gave the particulars of valuation adopting Rs.600/- (Rupees six hundred only) per square yard. Therefore, the petitioner cannot be said to have made out any valid grievance on this count.

The question of proper valuation –

The learned counsel for the petitioner submits that the petitioner has not suppressed the valuation, that though the godowns are part of the property purchased by the petitioner they are not in use and Gram Panchayat is also not levying any property tax. He placed reliance on a certificate dated 21-2-1999 issued by the Village Administrative Officer, Rajam to the effect that Gram Panchayat is not collecting any taxes as the godowns in S.No.152/15 are in a dilapidated condition. This is not relevant for the purpose of valuation under Andhra Pradesh Stamp (Prevention of undervaluation of Instruments) Rules 1975 (hereinafter called 'the Stamp Rules'). Further a Xerox copy of the sale deed dated
8-4-1999 has been placed before this Court. Both in the preamble portion as well as the schedule of the property of the sale deed of the said document, it is clearly mentioned that the petitioner herein has purchased 1/3 share, an extent of Acs.0.08 or 0.328 hectares i.e., 3969 square yards with a godown having measurement 91 x 31 feet bearing Door No.8-2004. Such being the case, the property has to be valued as land and building and not land alone as per Rule 5 of the Stamp Rules.

A reference may be made to the decision in **K. Upendra V. State of A.P.** (3 supra). In *Upendra's* case, after considering Rule 5 of the Stamp Rules, which deals with principles of determination of market value or consideration, this Court laid down as under.

Rule 5 of the Rules deals with principles for determination of the market value and treats house sites and buildings separately. It does not, however, mean that when the market value of the buildings is determined the registering authority should ignore totally the value of the house site itself. It may be mentioned that when the market value of the land on which the building stands, so to say, the appurtenant land is relevant factor for determination. If the submission of the learned Counsel for the petitioners is accepted, it would result in absurdity of valuing only the building and excluding the appurtenant land for the purpose of stamp duty. The petitioners purchased old building along with land and they themselves also valued the land for the purpose of stamp duty. The property demised under sale deed is not only the building but it is building with land. Therefore, the submission of the learned Counsel for the petitioners cannot be countenanced. Rule 5 only provides

guidelines and as per Section 6 the market value of the property shall have to be determined based on the likely sale value of the property in the open market at the time of execution.

A reference may also be made to the decision of the Supreme Court in **Duncans Industries Limited** (2 supra), wherein it was laid down that when the conveyance deed is in relation to the land as well as the industrial sheds and entire business as is where is basis, the entire value of the property has to be taken into consideration for the purpose of stamp duty.

The learned counsel for the petitioner has not raised any other submission. The Writ Petitions are devoid of merit and are accordingly dismissed without any order as to costs.

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V.V.S. RAO, J.

27th October, 2004

Js

L.R. Copy may be marked.

ASSISTANT REGISTRAR

To

1 One fair copy to the Hon'ble Sri Justice V.V.S. Rao

(for his Lordship's kind perusal)

2 The Chief Controlling Revenue Authority/The

Commissioner and Inspector General of Registration

and Stamps, N.B.K. Buildings, Zamistanpur,

Hyderabad.

3 The District Registrar of Assurances and Collector under

Indian Stamp Act, Srikakulam.

4 Deputy Inspector General of Registration and Stamps

and Deputy Collector, Flying Squad, Zone-I,

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5 The Under Secretary, Union of India, New Delhi.

6 The Secretary A.P. Advocates Association Library, High Court

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7 2 CCs to G.P. for Revenue (General), High Court Buildings,

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